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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions in)	
the Telecommunications Act of 1996)	
)	
Interconnection between Local)	CC Docket No. 95-185
Exchange Carriers and Commercial)	
Mobile Radio Service Providers)	

**COMMENTS ON THE USE OF TRANSPORT UNES BY THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the Further Notice of Proposed Rulemaking released August 18, 1997 ("Transport UNE FNPR"; FCC 97-295), the Association for Local Telecommunications Services ("ALTS") hereby files these comments concerning the appropriate use of transport unbundled network elements ("transport UNEs").¹

SUMMARY

First, the Commission should dispel the confusion that currently exists concerning application of the residual TIC to switched MOUs which transit ILEC switches via transport UNEs, an issue that was not raised in the FNPR, but which -- like the issues that were raised in the FNPR -- needs prompt resolution so that all parties will fully understand the economic functioning of transport UNEs prior to purchasing and using such elements.

¹ MCI Telecommunications and WorldCom, Inc. do not participate in these comments.

This confusion has arisen because AT&T contends the use of transport UNEs to carry switched minutes via an ILEC switch are exempted from application of the residual TIC under Rule 69.155(c) (AT&T Opposition to Petitions for Reconsideration in CC Docket No. 96-262, dated August 18, 1997, at 19-20).

But transport UNEs and Part 69 transport are indistinguishable under the language and policy of Rule 69.155(c). Accordingly, the residual TIC must be applied to switched minutes that traverse an ILEC switch via an ILEC's transport UNEs in exactly the same way as it is applied to switched minutes that traverse a switch via an ILEC's Part 69 transport (Rule 69.155(c)).

Second, the Commission decided in its Local Competition Order to permit new entrants to use UNEs to provide interexchange and access services to their local service customers based on the impossibility of separating local service from access services over a loop (order released August 8, 1996, CC Docket No. 96-98 at ¶¶ 357, 717). The Transport UNE FNPR now asks whether it is technically possible to use transport UNEs to serve the access traffic of end users that do not use the involved IXC's or access carriers for local service.

But the technical ability to combine transport UNEs with Part 69 origination and termination (which would appear to be the

only way IXCs could complete transport UNE traffic without winning the local customer) is irrelevant to the legal issue of the proper extent of Section 251(c)(3). Because the Commission only allowed local providers to provision the access traffic of their end users over UNES based on the technical impossibility of segmenting loop traffic, the technical feasibility of combining UNES with Part 69 rate elements -- a technical feasibility that existed at the time of the Local Competition Order just as much as at the present -- could not legally justify extending the use of UNES to the access traffic of end users not receiving local service from new entrants.

Nor is there any policy reason why the Commission should try to reinterpret Section 251(c)(3) so as to expand its scope at this time. Allowing indiscriminate use of transport unbundled network elements at TELRIC prices (which in the case of shared transport would necessarily be accompanied by the use of unbundled switching, since these UNES cannot be used separately) would permit significant arbitrage in current ILEC Part 69 revenues, thereby undercutting the carefully-crafted \$18.5B reduction in ILEC access charges over five years adopted in the Commission's Access Charge Reform Order, CC Docket No. 96-262, First Report and Order released May 16, 1997.

I. ALL SWITCHED MOUS USING ILEC TRANSPORT -- INCLUDING BOTH DEDICATED AND SHARED TRANSPORT UNES -- MUST BE ASSESSED THE RESIDUAL TIC UNDER RULE 69.155(c).

Prior to addressing whether transport UNES should be allowed to carry the access traffic of end users for whom the IXC's or access providers do not provide local exchange service, the Commission first needs to clarify an important preliminary matter concerning the application of the residual TIC to ILEC transport services under Rule 69.155(c).

The Commission determined in its Access Charge Reform Order that the residual TIC should not be assessed on any switched minutes carried to or from an ILEC switch by non-ILEC transport because otherwise: "competitors of the incumbent LEC pay some of the incumbent LEC's transport costs" (Access Charge Reform Order at ¶ 240; Rule 69.155(c)). AT&T contends that the use of transport UNES to carry transport switched minutes via an ILEC switch would qualify for the residual TIC exemption under Rule 69.155(c) (AT&T Opposition to Petition for Reconsideration dated August 18, 1997, in CC Docket No. 96-262, at 19-20).

According to AT&T: "... when a new entrant obtains use of the ILEC's unbundled transport facilities to provide its own services (including access services), it is a competitive provider no less than traditional competitive access providers that build their own facilities" (id. at 20). But ALTS is not contending that users of transport UNES occupy any secondary

status compared to facilities-based competitors. ALTS' point is only that the unfairness which motivated the Commission to adopt Rule 69.155(c) -- the recovery of ILEC transport costs via the residual TIC from competitors which provide their own competing transport service -- applies only where the CLEC actually provides its own transport.

ALTS does not dispute AT&T's freedom to obtain ILEC transport UNEs, and then "rebrand" those services as its own from the perspective of end users, nor does ALTS contend that AT&T should have to pay access charges in addition to the costs of transport UNEs.² Rather, ALTS' point is that, to borrow a term from manufacturing, the "Original Equipment Manufacturer" of transport UNEs is the ILEC in exactly the same way as the ILEC is the "OEM" for Part 69 transport for the purpose of Rule 69.155(c). Consequently, the residual TIC should apply to both. While ALTS applauds all of the Commission's efforts to foster effective competition, including the provision of unbundled network elements by the ILECs, it would be fundamentally illogical to interpret Rule 69.155(c) as exempting wholesale ILEC transport from application of the residual TIC while insisting

² The Commission recognized in its Access Charge Reform Order that the TIC is not a "facilities-based" access charge in reconciling its earlier decision permitting a limited assessment of the TIC on UNEs with its current policy of prohibiting any assessment of facilities-based access charges on UNEs (id. at ¶ 339).

the same charge must be paid by retail ILEC transport.

To prevent any confusion on this point, ALTS respectfully requests that the Commission clarify the meaning of Rule 69.155(c) before addressing the proper scope of transport UNEs.

**II. THE COMMISSION SHOULD INSURE ITS SCHEDULED
\$18.5B REDUCTION IN ILEC ACCESS CHARGES
OVER THE NEXT FIVE YEARS REMAINS INTACT BY
DECLINING TO EXPAND THE USE OF UNES AT THIS TIME.**

The Transport FNPR requests comments on whether dedicated or shared transport UNEs should continue to be limited to the provision of access services solely to the access traffic of those end users where the IXC or access carrier also provides local service (§§ 60-61). The Transport FNPR also requests comments concerning the legality of such expanded use in light of the Iowa Utilities decision by the Eighth Circuit.

The Commission decided in its Local Competition Order that Section 251(c)(3) permits new entrants to use UNEs to provide interexchange and access services to their local service customers based on the impossibility of separating local service from access services over a loop (order released August 8, 1996, CC Docket No. 96-98 at §§ 357, 717). The Transport UNE FNPR now asks whether it is technically possible to use transport UNEs to serve the access traffic of end users that do not use the involved IXCs or access carriers for local service. Because the Commission only allowed local providers to provision the access

traffic of their end users over UNEs pursuant to Section 251(c)(3) based on the technical impossibility of segmenting loop traffic, the technical feasibility of combining UNEs with Part 69 rate elements -- a technical feasibility that existed at the time of the Local Competition Order as much as at the present time -- could not legally justify extending the use of UNEs under Section 251(c)(3) to the access traffic of end users not receiving local service from new entrants.

Concerning the policy issues implicated in an expansion of the Commission's current interpretation of Section 251(c)(3), ALTS is unaware of any party that insists the same network function could somehow have an appreciably different cost structure for access traffic as compared to local traffic. Certainly, the Commission did not identify any such differences in its Local Competition Order (see, e.g., ¶ 1033: "We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge").

Thus, the principal policy issue that arises concerning expanding the use of UNEs to provide access services where such services are not provided in conjunction with local service, is

the potential arbitrage of existing Part 69 services, which are not set at TELRIC levels. As to this issue, the Commission already imposed a restriction on the use of UNEs to provide access even where the end user was also being served by the new entrant, a limitation it imposed out of caution about the potential Part 69 arbitrage (Local Competition Order at ¶ 720).³ The Eighth Circuit upheld this rule in CompTel v. FCC, 117 F.3d 1068 (1997), except to the extent the Commission's rule applied to intrastate calls (id. at 1075, n.5: "... We vacate the Commission's attempt to regulate the temporary recovery of access charges for intrastate calls contained in paragraphs 729 through 732 of the First Report and Order ... as being beyond the scope of the Commission's jurisdiction" (emphasis in original)).

The Commission should not attempt to extend its interpretation of Section 251(c)(3) to permit the unlimited use of transport UNEs at the present time. The Commission has already crafted a five year reduction in ILEC Part 69 revenues of \$18.5B. It would be fundamentally inconsistent for the

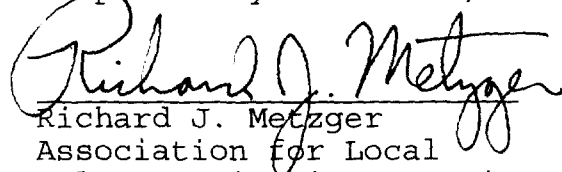
³ "We conclude that we should establish a temporary transitional mechanism to help complete all of the steps toward the pro-competitive goal of the 1996 Act, including the implementation of a new, competitively-neutral system to fund universal service and a comprehensive review of our system of interstate access charges. Therefore, for a limited period of time, incumbent LECs may recover from interconnecting carriers the CCLC and a charge equal to 75 percent of the TIC for all interstate minutes traversing the incumbent LECs' local switches for which the interconnecting carriers pay unbundled local switching element charges." (Emphasis supplied.)

Commission now to expand its statutory interpretation to permit the use of UNEs for unlimited arbitrage of Part 69 services, and thereby permit an accelerated erosion of Part 69 revenues, particularly where it has previously imposed limitations on the use of UNEs for access to assure the financial integrity of its access charge reform plans.

CONCLUSION

For the foregoing reasons, ALTS respectfully requests that its requested clarification of Rule 69.155(c) be granted, and that any expanded interpretation of Section 251(c)(3) concerning the use of transport UNEs as substitutes for interstate access charges be denied at this time.

Respectfully submitted,

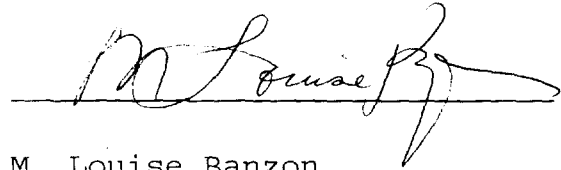
A handwritten signature in dark ink, appearing to read "Richard J. Metzger", is written over the typed name and address.

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October 2, 1997

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments by the Association for Local Telecommunications Services was served October 2, 1997, on the following persons by hand service.



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